

is no support for a composition with only ω -3 or a mixture of ω -3 and polysorbates in a ratio of 3:7." Applicant traverses this rejection.

First, contrary to the Examiner's contention, the claims do not recite a ratio of ω -3 fatty acid(s) to polysorbate of 3:7. Instead, the claims recite that the ratio of ω -3 fatty acid(s) to polysorbates is no greater than 3:7. Applicant respectfully submits that this ratio is fully supported in the specification within the meaning of § 112, first paragraph.

For example, Example 1a in the specification discloses the preparation of a micellular solution containing 160g of algae oil and 805 g of polysorbates. Since the algae oil is described as having 45% of an ω -3 fatty acid (DHA), the amount of ω -3 fatty acid in this solublizate is approximately 72g. Therefore, Example 1a discloses a composition where the ratio of ω -3 fatty acid(s) to polysorbate is 72:805, or about 24:268, or about 3:33, which is well below a 3:7 ratio, as called for by the claims.

Also in Example 1, a system containing an animal fat with a mixture of ω -3 fatty acids is mixed with polysorbates in a weight of ratio of 210:790. The ω -3 fatty acids used in this example are DHA (50% by weight), EPA (10% by weight), and DPA

(20% by weight). Thus, the total amount of ω -3 fatty acids in this example is 168 g (80% of 210g), which is used in conjunction with 790 g of sorbate. Thus, the ratio of ω -3 fatty acids to polysorbate is about 3:14, which again is less than 3:7.

In view of the foregoing, as well as the information set forth in the last Amendment, Applicant respectfully submits that a person of skill in the art would have understood that the claimed ratio of no greater than 3:7 was within Applicant's possession. This is all that is required to satisfy the written description requirement of § 112, first paragraph.

With regards to the correlation of the ω -3 fatty acid/polysorbate ratio and the specific polysorbate used, the claims recite that the ratio must be no greater than 3:7. Different polysorbates have different HLB values, but this fact is clearly known to those of skill in the art. Thus, a person of skill in the art easily determine the specific weight ratio of ω -3 fatty acid(s) to polysorbates.

With respect to claim 37, the Examiner has argued that not all animal fats would lead to the micelles of the present invention, and that applicants should set forth the particular ω -3 fatty acid composition of the animal fat. Applicant

respectfully disagrees. In the case of animal fats, micelles are built by emulgateion of fatty acids. Emulgateion is largely influenced by the lipophilic character of the fatty acid, which in turn is dependent on the length of the aliphatic chain. While ω -3 fatty acids differ from other unsaturated fatty acids by their metabolism mechanism. However, there is no significant difference between the lipophilic character of unsaturated fatty acids, including ω -3 fatty acids, and thus in their ability to form micelles with polysorbates.

Moreover, Examples 2 and 3 show micelle building of terpenes and polysorbates. Terpenes differ from ω -3 fatty acids in both their structures and physical properties. Nevertheless, both terpenes and ω -3 fatty acids can be used to produce micelles. In view of this fact, it is not reasonable to believe that different types of ω -3 fatty acids would show sufficiently different properties so as to invoke any patentability problems under 35 U.S.C. § 112, first paragraph.

As noted above, to satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. See, e.g., *Moba, B.V. v. Diamond Automation*,

Inc., 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003). In this instance, a person of skill in the art would reasonably conclude that Applicant was in possession of the claimed invention, with several examples and parts of the description showing this. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 112, first paragraph rejection.

Conclusion

Applicant respectfully submits that the application is condition for allowance, and prompt notice to that effect is earnestly solicited. Should any questions arise, the Examiner is invited to call the undersigned representative.

Respectfully submitted,

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